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No. 03-1372

Supreme Court, U.S.
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In The
Supreme Court of the United States

DALLAS GLEN HILLS, LP,

Petitioner,

v.

THOMAS ROKEBY CONYNGHAN CORFIELD, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION OF RESPONDENT LIBERTY CORPORATE CAPITAL, LTD.

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QUESTION PRESENTED

The sole question presented in this case is whether either 28 U.S.C. § 1332 or this Court's decision in *Carden v. Arkoma Associates*, 494 U.S. 185 (1990) requires a court to consider the citizenship of every underwriter subscribing to a Lloyd's of London insurance policy when the lead underwriter, a corporate citizen of the United Kingdom, sues only on its own behalf and not in any representative capacity.

RULE 29.6. DISCLOSURE

Liberty Corporate Capital, Ltd. is a corporation incorporated under the law of the United Kingdom. It is resident at 1 Minister Court, Mincing Lane, London, England. It is the sole member of Liberty Syndicate 190. Liberty Syndicate 190 is managed on behalf of Liberty Corporate Capital, Ltd. by Liberty Syndicate Management, Ltd. which is also a corporation created under the laws of the United Kingdom and which is resident at the same address. Neither Liberty Corporate Capital, Ltd. nor Liberty Syndicate Management, Ltd. is publicly held and neither corporation has any publicly held subsidiaries.

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BRIEF IN OPPOSITION OF RESPONDENT LIBERTY CORPORATE CAPITAL, LTD.

TO: THE HONORABLE CHIEF JUSTICE OF THE UNITED STATES AND TO THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

MAY IT PLEASE THE COURT:

Respondent Liberty Corporate Capital, Ltd., a corporation incorporated under the laws of the United Kingdom and resident in London, England, respectfully presents its brief in opposition to the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

The opinion of the Court of Appeals, 355 F.2d 853, 855-857 (5th Cir. 2003) correctly states the procedural history and the relevant facts of this case. Dallas Glen Hill's Petition mischaracterizes both the adjudicative facts and the holding of the Court of Appeals (*see*, *e.g.* the concluding paragraph on page 6 of the Petition). The Petition also erroneously represents that the requirement of "complete diversity" is statutory.

SUMMARY OF THE ARGUMENT

The Court should deny the Writ because none of the "compelling reasons" enumerated in Rule 10 exist on this record. The Court of Appeals correctly decided this case on its facts. Neither *Carden*, *supra*, nor any other decision of this Court mandates a different result.

ARGUMENT

A. There is no compelling reason to grant a writ in this case.

Rule 10 of this Court's rules is quite explicit when it provides in part:

> Review on a writ of certiorari is not a matter of right, but of judicial discretion. The petition for writ of certiorari will be granted only for compelling reasons. . . .

R. 10, RULES OF THE SUPREME COURT OF THE UNITED STATES (West 2004).

Despite Petitioner's rhetoric, any conflict between decisions of the several courts of appeal is more apparent than real. Moreover, Petitioner's crocodile tears shed for the workload of the federal judiciary do not make this case one of sufficient importance to justify granting the Writ. This record does not demonstrate, and there is no reason to expect, that the Court of Appeals' decision will flood the courts with litigation. Underwriters at Lloyd's have had access to the federal courts under the Diversity jurisdiction, the Federal Question jurisdiction, and the Admiralty jurisdiction for more than a century. *United States & Cuban Allied Works Engineering Corporation v. Lloyd's*, 265 U.S. 454, 44 S.Ct. 614, 68 L.Ed. 1103 (1924) (Diversity); *Nutting v. Commonwealth of Massachusetts*, 183 U.S. 553, 22 S.Ct. 38, 46 L.Ed. 324 (1902) (Federal Question); *The Tornado v. Atlantic Mutual Insurance Company*, 108 U.S. 342, 2 S.Ct. 746, 27 L.Ed. 747 (1883) (Admiralty); *Deleon v. Lloyd's London Certain Underwriters*, 259 F.3d 344 (5th Cir. 2001) (Diversity); *Certain Underwriters at Lloyd's London v. C. A. Turner Construction Company*, 112 F.3d 184 (5th Cir. 1997) (Diversity). There is no principled

reason to close the courthouse door to Liberty Corporate Capital, Ltd. and not to close it to all foreign corporations.

B. This case was correctly decided on its facts.

Petitioner ignores the central adjudicative fact of this case. On the record before this Court, Liberty is a British corporation which brought this Declaratory Judgment suit individually and not in any representative capacity. Liberty is a real party in interest, having underwritten 32.79% of the risk underwritten by the Underwriters subscribing to Policy No. CRCTX99-1128. In order to satisfy the requirement of "complete diversity" *Strawbridge v. Curtiss*, 3 Cranch 267 (1806), there is no principled reason to look beyond Liberty. *Navarro Savings Association v. Lee*, 446 U.S. 458, 100 S.Ct. 1779, 64 L.Ed.2d 425 (1980).

The central conceit of John Guare's 1990 play, *Six Degrees of Separation*, provides a helpful analogy. The conceit – that everybody on the planet is separated by only six other people – illustrates rather nicely the profound error of Petitioner's position. That is, if complete diversity requires an examination of all relationships of all corporate parties in diversity litigation, then all entities will ultimately be "related" and complete diversity will never exist. For example, in the insurance industry, reinsurance of risks is the rule rather than the exception. The larger the risk, the greater the likelihood of multiple levels of reinsurance. The existence of one or more reinsurance treaties is known to the insurer and its reinsurers, not to the insured. If an insurer, incorporated in and doing business in Connecticut, insures an office building in Oklahoma owned by a citizen of Texas, and the insurer

reinsures 80% of the risk with a Swiss reinsurer which, in turn, reinsures 80% of its 80% at Lloyd's and the Lloyd's underwriters reinsure 80% of their 64% of the risk in Tokyo and the Tokyo underwriters reinsure 80% of their risk in Bermuda and the Bermuda underwriters reinsure 80% of their risk in the Cayman Islands and the Cayman Islands underwriters reinsure 80% of their risk at Lloyd's, Petitioner would deny federal court access to the Connecticut insurer seeking a declaratory judgment against the Texas insured unless the insurer could show that no Texas residents were involved in any way in insuring any part of the risk. That is a nearly impossible burden. Complete diversity does not require an inquiry into all affiliations of each party. *Navarro, supra.*

By way of further example, suppose a Delaware corporation has a wholly owned Texas corporate subsidiary and a wholly owned Nevada corporate subsidiary. If the Texas subsidiary commits a tort in either Nevada or in Delaware and is sued in the state court of either state, Petitioner would deny the Texas subsidiary the right to remove to federal court because the non-party affiliate would destroy complete diversity. There is nothing peculiar about the policy at issue or the facts of this case that require an inquiry into the citizenship of non-parties.

Although the facts of this case are analogous to those of *E. R. Squibb & Sons, Inc. v. Accident & Casualty Insurance Co.*, 160 F.3d 925 (2nd Cir. 1998) (*Squibb I*); *E. R. Squibb & Sons, Inc. v. Lloyd's & Companies*, 241 F.3d 154 (2nd Cir. 2001) (*Squibb II*), they are not identical, if only because respondent is a British corporation and the underwriters in *Squibb I* and *Squibb II* were individuals. The Court of Appeals found *Squibb I* and *Squibb II* persuasive and easily reconciled with the similar results reached in

Certain Interested Underwriters at Lloyd's London, England v. Layne, 26 F.3d 39 (6th Cir. 1994) and *Chemical Leaman Tank Lines, Inc. v. Aetna Casualty & Surety*, 177 F.3d 210 (3rd Cir. 1999). In fact, the only contrary appellate authority is *Indiana Gas Co. v. Home Insurance Co.*, 141 F.3d 314 (7th Cir. 1998). That case is readily distinguishable from the present one because "Certain Underwriters at Lloyd's London" and "Certain London Market Insurance Companies" were present in the suit in **representative** capacities. Here, the Underwriter, a British corporation, is suing only on its own behalf. Equally important, the court in *Indiana Gas* erroneously assumed that English law prohibits an underwriter from being sued by an insured. *Indiana Gas*, 141 F.2d at 319, 321; *Squibb I*, 1653 F.3d at 936.

C. Neither *Carden* nor any other decision of this Court requires reversal of the Court of Appeals.

Carden's core holding that the citizenship of all partners (both general and limited) of a partnership is relevant to the determination of the existence of complete diversity is not applicable to the present case. Liberty is a British corporation. It is not a partnership or any other kind of artificial entity. The fact that it is the sole member (or "Name") of one of several syndicates subscribing to the policy at issue does not make citizenship of the non-party Names who make up the other syndicates relevant to the issue of complete diversity. Those syndicates are no more relevant on the facts of the present case than is the citizenship of members of trade associations to which Liberty may belong.

The Court of Appeals disposes of Petitioner's somewhat fuzzy and misplaced reliance on *Carden* rather handily:

> DGH argues that *Carden* compels the conclusion that every Name in a Syndicate must be considered because a Syndicate is an artificial entity. Assuming *arguendo* that a Syndicate is an artificial entity, a conclusion in and of itself open to debate, see *Squibb I*, 160 F.3d at 929; Chemical Leaman, 177 F.3d at 221, the citizenship of the Syndicates is of no relevance because they play no role in litigation over a Lloyd's policy. It is well-settled that Syndicates are not liable on Lloyd's policies – only individual Names are liable even though they subscribe to risks via Syndicates. The insured has no contractual relationship with a Syndicate because Syndicates do not insure risks. Thus, an insured has no claim against a Syndicate for coverage under a Lloyd's policy. While *Carden* might apply if the citizenship of the Syndicates were relevant, it does not apply to make the citizenship *866 of the other non-party Names, who are not members of an entity currently before the court, relevant to diversity jurisdiction.

355 F.3d 853, 865-866.

The Court of Appeals' decision in the present case is entirely consistent with its post-*Carden* jurisprudence. *Aetna Casualty & Surety Company v. Iso-Tex, Inc.*, 75 F.3d 216 (5th Cir. 1996).

CONCLUSION

Respondent Liberty Corporate Capital Ltd. prays that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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